



# **Meet and Confer for Public Safety Employees Changes to Indiana Law**

Sea No. 129; P.L. 48-2007

Bill Author: Senator R. Michael Young

## **ANALYSIS OF NEW LAW**

This law will add a new chapter and it will be found at IC 36-8-22 after July 1, 2007.

Generally, this bill concerns the rights and obligations of employers (units) and public safety employees in dealing with each other on issues of conditions of employment. Upon certain circumstances the city, town, county, or township (unit as defined in IC 36-1-2-23) will have to sit down and discuss with an “Exclusive Recognized Representative” of full-time police officers and firefighters to discuss employment issues and wages. The obligation to “meet and confer” does not apply to all units however.

There are other important aspects of the new law than just “meeting and conferring”; they follow. Consultation with your attorney will be necessary to fully understand the nuances of this new law and to apply the rules of statutory construction.

### **I. Effective Date**

Although the law will be effective on July 1, 2007, the *provisions* within the law do not apply until **January 1, 2008**.

### **II. Limitations on Applicability per Topic**

#### **A. Strike Prohibition**

This subsection applies without regard to population.

Beginning on January 1, 2008, and thereafter, a **full time** non-upper policymaking (see, IC 36-8-1-12 below for a definitional guidance for sworn officers) policeman, fireman or other **fire/police department employee** of a city, town, county or township (a unit pursuant to IC 36-1-2-23) or one of their employee organizations, including an Exclusive Recognized Representative (by whatever name they are called, including a union), may NOT participate in, or encourage participation, in a strike against the city, town, county or township employer of any size. (SEA 129, Sec. 15 and 2-5.)

To be a strike there must be two (2) or more employees (full-time fire/police department) participating in a work stoppage to gain compliance with demands or a temporary stoppage of work activities in protest against an act or condition of employment. (SEA 129, Sec. 6.)

The penalties for striking (as defined above) include: for the individual, termination through the disciplinary process of IC 36-8-3-4 and no payment of wages for the days the individual struck, and for an Exclusive Recognized Representative, forfeiture of representation for 10 years. (SEA 129, Sec. 15.)

#### B. Exempt Employers

Except for the strike penalties, a city, town, county or township that has adopted provisions and procedures by ordinance, resolution, amendment, or executive order that permits a full-time employee of a police or fire department (not in an upper policy making position) to form, join, or assist an employee organization to bargain collectively are not covered by most of the provisions of this new chapter. Thus there would be no change to the current arrangements as it would still be covered by the ordinance, resolution, amendment or executive order.

If a city, town, county or township has already entered into a collective bargaining agreement, or a memorandum of understanding with an employee organization or a recognized representative before January 1, 2008, this chapter may not be construed to annul, modify, or limit the agreement or memorandum *during the term* of the agreement or memorandum. After the contract or memorandum expires, this law will apply. (SEA 129, Sec. 7.)

#### C. All Other Provisions of the Chapter — Population Requirement

All other parts of the law apply only to a city, town, county, and township (unit as defined in IC 36-1-2) with a population of 7,000 or more. (SEA 129, Sec. 7.)

### **III. Rights Established by the Law (population over 7,000)**

#### A. Rights For Full-time Police and Fire Employees (non-upper level policymaking positions)

These police and fire employees have the right to:

- ⇒ discuss their interests as employees on the *employees' own time*;
- ⇒ form an employee organization on the *employees' own time*; and
- ⇒ join and assist an employee organization, which is an organization that includes full-time police and firefighters with the *primary* purpose of representing its

- members on issues concerning grievances, wages, rates of pay, hours of employment, conditions of employment, or becoming an Exclusive Recognized Representative.
- ⇒ Specifically permitted rights are soliciting membership, joining an employee organization to present the view of the employee; and having dues deducted from employee wages and submitted to the Exclusive Recognized Representative (*an employee organization chosen through an election, SEA Sec. 9*) (SEA 129, Sec. 8.)

#### B. Rights For City, Town, County and Township (7,000 population) Employers

This law is specifically NOT meant to limit an employer's ability to do any of the following:

- ⇒ direct the work of the employees;
- ⇒ hire, promote, demote, transfer, assign, and retain employees in positions;
- ⇒ suspend, discharge, or otherwise discipline employees for just cause;
- ⇒ maintain the efficiency of government operations;
- ⇒ relieve employees from duties because of lack of work or other legitimate reasons; or
- ⇒ take actions that may be necessary to govern in emergencies. (SEA 129, Sec. 10.)

#### **IV. Statutory Prohibitions**

##### Cities, towns, counties and townships are not allowed to

- ⇒ Interfere with, restrain, or coerce employees in the exercise of the rights (listed above) of the full time non-upper level policymaking police, firemen or other employees on the police/fire department in a unit with 7,000 or more population.
- ⇒ Dominate, interfere with, or assist in the formation or administration of an employee organization, or contribute financial or other support to an employee organization. (However, an employer *may* permit employees to meet and confer and represent employee interests during working hours without loss of time or pay.)
- ⇒ Discriminate in regard to hiring or conditions of employment to encourage or discourage membership in an employee organization.
- ⇒ Retaliate or otherwise discriminate against an employee because the employee has filed a complaint, an affidavit, or a petition or has given information or testified under this chapter.
- ⇒ *Refuse to meet and confer in good faith with an EXCLUSIVE RECOGNIZED REPRESENTATIVE.* (not any other group; see definition of Exclusive Recognized Representative below.)
- ⇒ Enter into an agreement that will place the employer in a position of deficit financing (making expenditures that exceed the money legally available to an employer in any budget year).

⇒ May not enter into an agreement lasting over forty-eight (48) months. (SEA 129, Sec. 11, 14 and 16.)

## **V. Determining an Exclusive Recognized Representative**

There is an Exclusive Recognized Representative to meet and confer with if:

- (1) *before January 1, 2008*, the employee organization was *recognized* by the city, town, county or township *as the sole representative* of the employer's employees (full-time employees of a police or fire department not in upper level policymaking positions); or
- (2) *after December 31, 2007*, the full-time non-upper level policymaking employees in the police or fire department choose the entity or organization in *an election* to be the Exclusive Recognized Representative.

The unit employer *may not conduct the election* for the Exclusive Recognized Representative *until January 1, 2008*, and only then if *at least thirty percent (30%)* of the full-time non-upper level policymaking employees sign a *petition requesting the election* and, if, there *has not been an election within the last 2 years*.

A petitioned election shall be conducted at least thirty (30) but not more than sixty (60) days after the employer receives the petition. ***The employee organization receiving more than fifty percent (50%) of the votes cast becomes the Exclusive Recognized Representative.*** (SEA 129, Sec. 9.)

## **VI. Meet & Confer**

A unit over 7,000 in population may meet and confer and/or enter into an agreement with an Exclusive Recognized Representative. A unit ***MUST*** meet and confer in good faith at reasonable times, including meeting *in advance of the budget making process*, to discuss issues and proposals regarding wages, hours of employment, and other conditions and terms of employment ***only with an Exclusive Recognized Representative upon WRITTEN NOTICE and if the obligation has not been terminated.*** There must be one or more meetings.

## **VII. Termination of Meet & Confer**

A city or town (county, township) with a population of 7,000 or more and full-time employees in the police and fire departments may elect to terminate its duty to meet and confer with an Exclusive Recognized Representative *only* for 1 year if:

- (1) *after meeting and conferring with the Exclusive Recognized Representative the parties are unable to reach a written agreement*; and

(2) *at least fifty percent (50%) of the members of the legislative body vote to terminate the duty to meet and confer and*

(3) written notice of the termination is given to the Exclusive Recognized Representative.

### **VIII. No Deficit Financing Permitted**

No agreement with an Exclusive Recognized Representative may place the governmental entity in a deficit financing situation. Deficit Financing is a defined term meaning the making of expenditures that exceed the money legally available to an employer in any budget year. (SEA 129, Sec. 14.)

### **IX. Other Information**

Issues and proposals regarding wages, hours of employment, and other conditions and terms of employment discussed with *an Exclusive Recognized Representative* involve more than just salary ordinance amounts. It will be such things as specialty pay, increased costs of the pension base, time off with pay, hours of work, work assignments, shifts, job duties, grievance procedures and the like, and the legal jargon and legal precedents that surround each issue.

#### **IC 1-1-4-5 Definitions applicable to construction of all Indiana statutes**

Sec. 5. The following definitions apply to the construction of all Indiana statutes, unless the construction is plainly repugnant to the intent of the general assembly or of the context of the statute:... (29) “**Year**” means a calendar year, unless otherwise expressed.... (emphasis added)

#### **IC 36-8-1-12 “Upper level policymaking position”**

Sec. 12. “Upper level policymaking position” refers to the position held by the police chief or fire chief and to each position held by the members of the police department or fire department in:

- (1) the next rank and pay grade immediately below the chief, if the authorized size of the department is:
  - (A) more than ten (10) but less than fifty-one (51) members, in the case of a police department; or
  - (B) more than ten (10) but less than two hundred one (210) members, in the case of a fire department; or
- (2) the next two (2) ranks and pay grades immediately below the chief, if the authorized size of the department is:
  - (A) more than fifty (50) members, in the case of a police department; or
  - (B) more than two hundred (200) members, in the case of a fire department

**IC 36-8-1-9 “Member of the police department”**

Sec. 9. (a) Except as provided in subsection (b), “member of the police department” means the police chief or a police officer appointed to the department.

(b) “Member of the police department”, for purposes of IC 36-8-4-7, does not include the police chief hired under a waiver under IC 36-8-4-6.5(c).